IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 18TH JULY 2007 / 27TH ASHADHA 1929

WP(C).No. 1566 of 2007(J)

PETITIONER:

KURIAKOSE THOMAS,
MURIANIKKAL (PERINGANATH) HOUSE,
KANGAZHA, KOTTAYAM DISTRICT.

BY ADV. SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE

RESPONDENTS:

1. THE DISTRICT COLLECTOR,
KOTTAYAM.

2. THE ASSISTANT EXECUTIVE ENGINEER,
PWD ROADS SUB DIVISION, KANJIRAPALLY.

BY GOVERNMENT PLEADER SHRI.BENCHAMIN PAUL.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P(C).No. 1566/07.

APPENDIX

PETITIONER'S EXHIBITS:

P1. COPY OF THE LEASE DEED.

P2. COPY OF THE TAX RECEIPT.

P3. COPY OF THE TAX RECEIPT DTD.30.10.06.

P4. COPY OF THE ORDER DTD.2.1.2007 BY R2.

P5. COPY OF THE JUDGMENT IN W.P.C.NO.27047/06 OF THIS COURT.

P6. COPY OF THE REPRESENTATION.

Sdk+

///True copy///

P.A. to Judge.

S.SIRI JAGAN, J.

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W.P.(C).No.1566 of 2007

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Dated this the 18th day of July, 2007

J U D G M E N T

The petitioner challenges Ext.P4 notice whereby the petitioner has been directed to demolish the building on the allegation that the same protrudes into road puramboke. Petitioner's contention is that he has not been heard before issuing Ext.P4. The 2nd respondent has filed a counter affidavit, in which he has stated that the eviction of the petitioner was necessitated on account of the direction in the judgment of this court in W.P(C).No. 27047/2006, in which at the instance of one Sri.Rajendran Nair and one Sri.E.A.Bahseer, encroachments in the road puramboke in Pathanadu junction have been directed to be evicted. The counter affidavit filed by the 2nd respondent proceeds on the basis that it is pursuant to the said direction in the said judgment that the present proceedings against the petitioner have been initiated. Even if this court had directed so, before effecting eviction, the petitioner is entitled to a notice and hearing since the principles of natural justice demand the same and the petitioner was not a party to the said writ petition. Moreover, the Kerala Land Conservancy Act and Rules prescribe a

procedure for eviction of unauthorised occupation. The counter affidavit is silent about whether the petitioner has been issued a show-cause notice or granted a hearing before issuance of Ext.P4. As such, I am satisfied that Ext.P4 has been issued in violation of the principles of natural justice as also the provisions of the Kerala Land Conservancy Act and Rules. In the above circumstances, this writ petition is disposed of with the following directions:

The 2nd respondent shall treat Ext.P4 as a show-cause notice. The petitioner shall file his objections within two weeks. Thereafter, the 2nd respondent shall afford an opportunity to the petitioner of being heard which shall include opportunity to adduce evidence also. The 2nd respondent shall consider the objections of the petitioner and the evidence adduced by him, and pass a speaking order within a period of two months from the date of receipt of a copy of this judgment. The petitioner shall not be evicted from the property in question, till orders thus passed are communicated to the petitioner.

Sd/-

sdk+ S.SIRI JAGAN, JUDGE

///True copy///

P.A. to Judge.